

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

JAY M. SLAUTER,
Petitioner/Appellant,

and

ANN P. SLAUTER,
Respondent/Appellee.

No. 2 CA-CV 2014-0091
Filed March 9, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. D20111692
The Honorable Danelle B. Liwski, Judge

AFFIRMED

COUNSEL

Jay M. Slaughter, Tucson
In Propria Persona

Roger W. Frazier, Tucson
Counsel for Respondent/Appellee

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MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 Jay Slauter appeals from the trial court's order modifying spousal maintenance payments to his wife, Ann. He contends the facts do not support the court's award of spousal maintenance, the amount of the modification was inconsistent with the court's conclusion that Ann's inheritance constituted a continuing and substantial change, and the court erred in awarding maintenance for an indefinite period. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the trial court's order. *Cullum v. Cullum*, 215 Ariz. 352, ¶ 9, 160 P.3d 231, 233 (App. 2007). In 2011, Jay filed for legal separation without children and later moved to convert the action to a dissolution. On the first day of trial, Jay and Ann stipulated as to all remaining issues, including spousal maintenance and the division of property, and those terms were ultimately reflected in a decree signed in September 2012.

¶3 The decree provided that Ann would remain in the marital home and Jay would pay the mortgage as well as an additional \$700 per month in spousal maintenance until the home sold. Upon the sale of the home, Jay would pay Ann \$1,800 per month for the next year, followed by \$1,600 per month for a year, followed by \$1,500 per month until spousal maintenance was modified or terminated.

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¶4 In January 2013, Ann’s brother died unexpectedly, leaving her approximately \$211,000 and half interest in his home.¹ Ann used the cash to purchase the marital home, and paid Jay his equity – approximately \$49,000. Pursuant to the decree, Jay began paying Ann \$1,800 per month in October 2013. He filed a petition to terminate spousal maintenance in December 2013. After two hearings, the trial court modified the terms of spousal maintenance so that beginning in January 2014, Jay would pay Ann \$1,500 per month rather than stepping down the amount each year for the first two years. This ultimately reduced Jay’s spousal maintenance payments by \$3,900. Jay filed this timely appeal.

Trial Court’s Findings Pursuant to A.R.S. § 25-319(B)

¶5 Jay first argues evidence introduced at the hearings on his petition does not support the trial court’s conclusions regarding each party’s financial status. We review the court’s award of spousal maintenance for an abuse of discretion, and affirm if there is any reasonable evidence to support it. *Helland v. Helland*, 236 Ariz. 197, ¶ 22, 337 P.3d 562, 567 (App. 2014).

¶6 Modification or termination of spousal maintenance is authorized “only on a showing of changed circumstances which are substantial and continuing.” A.R.S. § 25-327(A). The “changed circumstances” require review of the parties’ economic situations under A.R.S. § 25-319(B). *Smith v. Mangum*, 155 Ariz. 448, 451, 747 P.2d 609, 612 (App. 1987). Section 25-319(B) lists thirteen relevant factors for the court to consider in determining the amount and duration of maintenance. Jay contends the trial court erred as to five of those factors. We consider each in turn.

¶7 Section 25-319(B)(1) requires the court to consider the standard of living established during marriage. Under this factor, the trial court concluded the couple maintained a middle class standard of living. Jay appears to argue the court should have made

¹At the time the court issued its under advisement ruling, the home had not yet sold, but the parties believed it was valued at approximately \$240,000.

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further findings, but neither party requested findings of fact and conclusions of law; therefore, the court was not required to make detailed findings. Ariz. R. Fam. Law P. 82(A); *Rinegar v. Rinegar*, 231 Ariz. 85, ¶ 20, 290 P.3d 1208, 1213 (App. 2012). To the extent Jay objects to the court's findings, he does not argue that any facts in the record contradict the court's conclusion. Rather, Jay argues he currently does not have the ability to support a middle class standard of living for both spouses, which is irrelevant to the court's conclusions regarding the standard of living during marriage. We will, however, address this argument in the next subsection.

¶8 Jay argues the evidence did not support the trial court's conclusion that he was capable of meeting his own needs as well as Ann's, pursuant to § 25-319(B)(4). The court determined that because Jay originally agreed to pay \$1,800 per month after the sale of the home, increased expenses upon his remarriage did not render him incapable of meeting Ann's needs.

¶9 A voluntary increase in expenses is not a ground to reduce spousal maintenance. See *Ruskin v. Ruskin*, 153 Ariz. 504, 507, 738 P.2d 779, 782 (App. 1987) (husband could not "avoid his duty to pay spousal maintenance by voluntarily reducing his ability to pay" due to increase in expenses and decrease in income); see also *Patterson v. Patterson*, 102 Ariz. 410, 415, 432 P.2d 143, 148 (1967) (husband's voluntary decision not to work did not diminish obligation to ex-wife and children). Jay contends he was struggling under the original decree and that he is operating at a deficit before he even pays spousal maintenance. But, as the trial court noted, Jay voluntarily agreed to the terms of the decree, and any difference between his expenses at that time and now is the result of a voluntary increase in his expenses.² There was reasonable evidence to support the court's finding on this factor.³

²Although Jay argued repeatedly before the trial court that he decreased his expenses between the time of the decree and the present, it is apparent that the bulk of the decrease was because he no longer pays the mortgage on the marital home. Several expenses—such as rent, telephone, food, and medical expenses—drastically increased, as did Jay's debts. During the hearing, Jay

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¶10 Section 25-319(B)(5) requires the court to evaluate the comparative financial resources of each party, including their earning abilities. Jay argues Ann is in a better position because of her inheritance, and because the marital home—which she now owns—has an apartment she could rent out. The trial court concluded Jay has greater financial resources because he worked throughout the marriage and is the beneficiary of a farm trust.

¶11 Jay has one undergraduate and two graduate degrees and receives \$55,000 per year as a school principal. He also receives approximately \$25,000 per year from a family farm trust. Ann has some college education, stayed home for about eight years while their now-grown children were young, and otherwise worked hourly jobs as a bank teller, in a medical office, and others, earning about \$11.75 per hour at her last job before she was laid off. After that, she applied for more than 120 jobs and eventually was employed at an antique mall, where she worked her way up to about thirty-two hours per week for \$10 per hour, or approximately \$16,000 per year. Jay introduced evidence from a rehabilitation consultant who suggested Ann could get a full-time job earning between \$12 and \$15 per hour, but the record indicated she had tried to do so and failed.

¶12 When considering how to apply property to a spousal maintenance calculation, a trial court must consider the income potential of that property. However, the spouse need not “use up”

admitted he spent approximately \$24,000 on trips out of the country and dental work for his new wife.

³ Jay also appears to contend the trial court abused its discretion because the order provided Ann more than twenty-five percent of his income. He cites only to *Sommerfield v. Sommerfield*, 121 Ariz. 575, 578-79, 592 P.2d 771, 774-75 (1979), in which our supreme court determined an award of less than twenty-five percent was found not to be an abuse of discretion. But that case merely states the court has broad discretion to determine the reasonable award, and does not set a bright line rule regarding what is reasonable.

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the property in lieu of support. *Deatherage v. Deatherage*, 140 Ariz. 317, 320-21, 681 P.2d 469, 472-73 (App. 1984); *see also Ruskin*, 153 Ariz. at 506, 738 P.2d at 781. Jay did not introduce evidence below concerning the income potential of Ann's inheritance and he does not suggest on appeal that an investment of approximately \$300,000 would produce an annual return approaching Jay's income. Regarding the apartment, Jay argues it must be rented, but evidence introduced at trial indicates much of the house needs repair before it would be ready for rent, and the parties rarely rented out the apartment before the dissolution—limiting rental to the occasional family friend. There is reasonable evidence in the record from which the trial court could conclude Jay has greater financial resources than Ann.

¶13 Regarding § 25-319(B)(7), the extent to which the spouse seeking maintenance has reduced her income or career opportunities to the benefit of the other spouse, Jay argues Ann could earn more and that she did not take much time out of her career to raise the children. The trial court concluded Ann reduced her career opportunities. As noted above, she worked a variety of hourly jobs and spent eight years raising their children. There is reasonable evidence to support the court's finding on this issue.

¶14 Finally, Jay contends the trial court erred in its finding on § 25-319(B)(9), concerning the financial resources of the party seeking maintenance. Jay again argues that Ann's inheritance and the apartment place her in a better position to meet her needs, particularly because she no longer pays a mortgage on the marital home. As noted above, Ann is not required to "use up" her inheritance, *Deatherage*, 140 Ariz. at 320-21, 681 P.2d at 472-73, and Jay did not introduce evidence that the income potential would meet Ann's needs. Reasonable evidence supported the court's findings on these § 25-319(B) factors, therefore the court did not abuse its discretion in awarding spousal maintenance based on those findings.

Substantial Change in Circumstances

¶15 Jay argues the trial court erred when it found that Ann's changed circumstances were substantial and continuing, but then

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only ordered a temporary downward change to spousal maintenance. We again review for an abuse of discretion. *Helland*, 236 Ariz. 197, ¶ 22, 337 P.3d at 567.

¶16 As noted above, pursuant to A.R.S. § 25-327(A), provisions of a decree regarding spousal maintenance may only be modified on a showing of changed circumstances “that are substantial and continuing.” Jay appears to contend that because the trial court concluded Ann’s inheritance resulted in substantial and continuing changed circumstances, the court was required to modify the spousal maintenance more drastically. He cites no case law in support of this contention, and we are aware of none. Further, the facts do not support Jay’s arguments. Even though the court’s modification only affected the first two years of payments – by requiring Jay to pay \$1,500 rather than starting at \$1,800 and stepping down after a year – it resulted in an immediate reduction to Jay’s obligations, totaling approximately \$3,900.

¶17 Jay also argues the trial court made a “punitive decision,” citing arguments of Ann’s counsel that Jay “want[ed] to kick [Ann] to the curb.” He does not cite any case law in support of this argument, nor does he cite any statements made by the court to indicate its decision was punitive. *See* Ariz. R. Civ. App. P. 13(a)(6) (argument “shall contain . . . citations to the authorities, statutes and parts of the record relied on”); *In re Marriage of Downing*, 228 Ariz. 298, ¶ 11, 265 P.3d 1097, 1100 (App. 2011). This argument fails without further support.

Term of Maintenance

¶18 Finally, Jay argues the trial court erred in finding, in support of the permanent award of spousal maintenance, that Ann would not be able to achieve financial independence; he further requests that Ann’s term of maintenance expire upon his retirement. We review the duration of an award for an abuse of discretion. *See Rainwater v. Rainwater*, 177 Ariz. 500, 502, 869 P.2d 176, 178 (App. 1993).

¶19 As with Jay’s first arguments regarding the amount of maintenance, duration of maintenance is determined with reference

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to the factors listed in § 25-319(B). *Id.* Ultimately, however, Jay repeats the arguments made above—Ann’s inheritance put her in a position to meet her own needs, Jay cannot meet his own needs, and there was some evidence showing Ann could rent out the apartment and could have a higher-paying job.

¶20 We will not re-weigh conflicting evidence on review, *Hurd v. Hurd*, 223 Ariz. 48, ¶ 16, 219 P.3d 258, 262 (App. 2009), and reasonable evidence supports the trial court’s award of indefinite spousal maintenance. As detailed above, Jay currently has greater financial resources than Ann, and she is unable to meet her needs with her limited income. Reasonable facts support the court’s conclusion that the term of maintenance should be indefinite. *See Rainwater*, 177 Ariz. at 504-05, 869 P.2d at 180-81 (upholding award of \$1,200 per month until wife’s death or remarriage).

Disposition

¶21 We affirm the trial court’s ruling modifying spousal maintenance. Ann requests an award of her attorney’s fees and costs pursuant to A.R.S. § 25-324 and Rule 21, Ariz. R. Civ. App. P. Attorney fees may be awarded after considering the financial resources of the parties and the reasonableness of the positions each party took throughout the proceedings. A.R.S. § 25-324(A). Taking into account the reasons for affirming the award and the financial positions of the parties, in our discretion we decline to award Ann attorney fees. As the prevailing party on appeal, however, Ann is entitled to reimbursement of her costs upon compliance with Rule 21(a).